

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EARL CAYADITTO and ETHEL MESCAL,
individually, and as natural and legal parents
of Ethan Cayaditto, deceased minor child, and
BRETT J. OLSEN, Esq., as the Personal
Representative of the ESTATE OF ETHAN
CAYADITTO, deceased minor child,

Plaintiffs,

vs.

No. CIV 04-1261 JC/LFG

THE UNITED STATES OF AMERICA,

Defendant.

**DEFENDANT'S AND PLAINTIFFS' MUTUALLY APPROVED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The parties hereby stipulate to the following Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

1. Ethan Cayaditto was born on 11/17/01 to 36 year old Ethel Mescal at Presbyterian Hospital in Albuquerque, New Mexico. Ms. Mescal was transferred to Albuquerque from Crownpoint Hospital to deliver her child. (Ex. 2, L23)
2. Ethan Irwin Cayaditto was born on November 17, 2001, and died on December 20, 2002, when he was just over 13 months old.
3. Earl Cayaditto and Ethel Mescal are residents of the State of New Mexico, and reside in the County of McKinley.
4. Mr. Cayaditto and Ms. Mescal are members of the Eastern Navajo Nation.

Ethan Cayaditto, deceased, was also a member of the Eastern Navajo Nation, having been listed on the Navajo Indian Census Roll as being four-quarters (4/4) degree Navajo Indian blood.

5. Plaintiffs lodged timely claim with the Department of Health and the claim was denied. Plaintiffs' Complaint was timely filed after denial of the claim.

6. Defendant operates the Indian Health Service, an agency of the government of the United States of America, and through it, owns and operates Pueblo Pintado Clinic in Pueblo Pintado, New Mexico and Crownpoint Healthcare Facility in Crownpoint, New Mexico.

7. Ethan Cayaditto was born at Presbyterian Hospital in Albuquerque, New Mexico, on November 17, 2001, by C-section. He was born at 30 weeks and was, therefore, premature. Ethan remained at Presbyterian Hospital until December 14, 2001, for a total of 27 days, He was transferred to Gallup Indian Medical Center for additional observation.

8. During his stay at Presbyterian, on December 3, 2001, he was diagnosed at risk for respiratory syncytial virus (RSV), secondary to his gestational age. Presbyterian recommended Synagis administration when close to discharge and monthly thereafter during the RSV season. The RSV season is during the winter months, however, differs among regions.

9. Ethan received Synagis through IHS.

10. At birth, Ethan was in the very lowest percentiles for length, weight and head circumference, as established by the American Academy of Pediatrics. However, in November of 2002, Ethan had developed to the point that he was in the 25th

percentile for length, almost the 75th percentile for weight, and approximately the 80th percentile for head circumference.

11. Ethan was pronounced dead at 1:47 p.m., on December 20, 2002.

12. Ethan died of acute bronchiolitis/bronchitis which was caused by RSV.

Bronchiolitis is a common condition in infants and children and occurs most commonly in the winter months. RSV is the most common cause of bronchiolitis.

PROPOSED CONCLUSIONS OF LAW

1. Venue is properly laid in this District.

2. The United States District Court, for the District of New Mexico has subject matter jurisdiction for this Complaint.

Respectfully submitted,

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United States Attorney

/s/ (Filed electronically 01-18-06)

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Telephonic approval 01-18-06

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